

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-77-C - ORDER NO. 2003-572 ✓ *HB*
SEPTEMBER 17, 2003

IN RE: Application of BellSouth Public Communications, Inc. for Approval to Divest Itself of Its Assets.) ORDER GRANTING) MOTION AND) ADOPTING) PROTECTIVE ORDER
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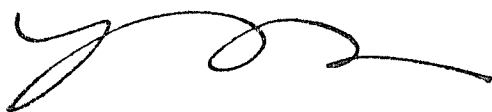
This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion to Approve Protective Order filed by BellSouth Public Communications, Inc. (BSPC) and the parties in this Docket (collectively, the parties). The parties in this Docket (with one exception to be explained below) request that this Commission review and approve the submitted Protective Order, attached to this Order as Exhibit A. The parties note that they have met with the Commission-appointed mediator several times to discuss steps necessary to facilitate BSPC's decision to divest itself of its assets. Under the guidance of the mediator, the parties have agreed to the terms of the submitted Protective Order as a method to address various issues raised during the mediation process. (We would note that the Consumer Advocate for the State of South Carolina has now stated that he does not join in the Motion. However, we would also note that he does not oppose the Motion, either. We will therefore proceed to rule on the Motion.)

A review of the proposed Protective Order reveals that there is certain information, most notably payphone locations, which BSPC considers to be confidential

information. However, for purposes of this Docket, BSPC is willing to share that information with the other parties and the Commission for various limited purposes, as long as that information is protected by a Protective Order. We have reviewed the terms of the proposed Protective Order, and we find that the terms of the proposed Protective Order are reasonable and fair to all parties. The terms of the proposed Protective Order allow reasonable access to the information, while at the same time protecting the confidentiality of that information. We therefore grant the Motion to approve the proposed Protective Order as filed, and we hereby adopt that Protective Order as the Order of this Commission.

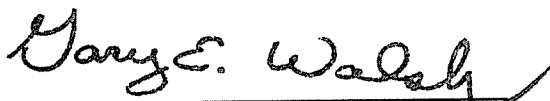
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



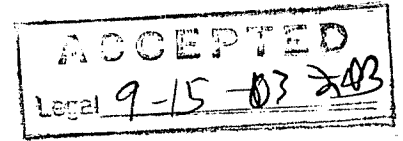
Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-77-C

IN RE:

Application of BellSouth Public
Communications, Inc. for Approval to
Divest Itself of its Assets

PROTECTIVE ORDER

Pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure and Regulation 103-854, and in order to facilitate the prompt resolution of disputes over confidentiality, to adequately protect material entitled to be kept confidential, and to ensure that the protection is afforded to material so entitled, the Public Service Commission of South Carolina ("Commission") hereby orders that:

1. *Exchange of Confidential Information.* Any party to this docket shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Protective Order before the Commission, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Order. This Protective Order shall control the production and disclosure of all materials deemed "Confidential Information" pursuant to Paragraph 2 below.

2. *Confidential Information.*

(a) Any materials generated or provided by a party may be designated as "Confidential Information" by that party if the party believes in good faith that the materials are confidential or proprietary and are entitled to protection from disclosure under any provision of South Carolina or Federal law, or are subject to existing non-disclosure obligations to a third party. The designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to challenge the release of such materials by the United States in response to a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, or the State of South Carolina in response to a request pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §30-4-10 *et seq.* Any party asserting confidentiality for such material shall so indicate by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking or markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the party or other person who has designated a document to be stamped as Confidential Information, or as hereinafter provided, no Confidential Information may be disclosed to any person. For purposes of the

Protective Order, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, subpoena, by agreement or otherwise. Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection. Confidential Information produced in electronic form shall be on CD ROMs or floppy disks in a format that is accessible and viewable by the receiving party(ies) using one or more Microsoft Office application or an Adobe Reader.

(b) Notwithstanding Section 2(a) above, "Confidential Information" shall not include information that: (i) is already known by the party receiving the information free from any non-disclosure obligation; (ii) is or becomes publicly known through no wrongful act of the receiving party or any party subject to this Protective Order; (iii) is rightfully received from a third party without restriction and without violation of this Protective Order; or (iv) information that is independently developed by a party without using any Confidential Information of any party to this Protective Order.

3. *Permissible Disclosure of Confidential Information.*

(a) Notwithstanding Paragraph 2, Confidential Information provided pursuant to this Protective Order may be disclosed without prior consent only to the following persons, only in prosecuting This Proceeding, and only to the extent necessary to assist in prosecuting This Proceeding:

- (1) Counsel of record representing a party in This Proceeding and any legal support personnel (e.g., paralegals and clerical employees) employed or engaged by such attorneys, and other employees, officers, or directors of a party.
- (2) Consultants or experts retained by a party, who are not currently involved in the marketing, procurement, manufacturing, pricing, or development of payphone services, equipment, or software. Individuals who become reviewing representatives under this paragraph may not use the Confidential Information made available in This Proceeding to plan, develop, or market any payphone services, equipment, or software. Nor may individuals who become reviewing representatives under this paragraph use the Confidential Information to engage or consult in the marketing, procurement, manufacturing, pricing, or development of any payphone services, equipment, or software.
- (3) The Commission or its staff.
- (4) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions.
- (5) Any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(6) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in This Proceeding.

(7) Subject to Section 7 below, a court, regulatory agency or other government body of competent jurisdiction when compelled by such court, agency or government body.

(b) Persons obtaining access to Confidential Information under this Protective Order shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting This Proceeding before this Commission or any arbitrator appointed by this Commission. Each individual who is provided access to Confidential Information pursuant to sections (a)(2), (a)(5), or (a)(6) of this Paragraph, must first sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Order and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is attached as Attachment A to this Protective Order.

(c) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in section (a) of this Paragraph. Each party shall maintain a record of the persons to whom copies of Confidential Information have been provided. Any note memorializing or recording of Confidential Information shall, immediately upon creation, become subject to all provisions of this Protective Order.

(d) Within ninety (90) days of termination of This Proceeding, including all appeals and petitions, all originals and reproductions of any Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party or destroyed by the receiving party upon written request of the producing party. In addition, upon such termination, any notes or other work product, derived in whole or in part from the Confidential Information shall either be (i) destroyed, and counsel of record for the receiving party shall notify counsel for the party who produced the materials in writing that this has been completed or (ii) retained by counsel of record for use in any public interest payphone proceeding conducted by the Commission (including any appeals thereof) provided that non-disclosure obligations substantially similar to those contained in this Protective Order shall govern use and disclosure of the extracts of such notes or work product that contain the producing party's Confidential Information. If materials are destroyed rather than returned to the producing party, a sworn statement to that effect by counsel of record for the receiving party shall be provided to the producing party. A limited exception to the provisions of this Section is recognized for the Commission wherein the Commission shall be allowed to retain, under seal, one copy of all Confidential Information for purposes of preserving the official record of the Commission. Further, all Commission staff notes or work product shall be accumulated and kept under seal with all other confidential information which compiles the official record of the Commission.

(e) Before disclosing a document marked as Confidential Information to any person listed in Subparagraph 3(a)(5) or (a)(6) who is a competitor (or an employee or officer of a competitor) of the party, including a third party, that so designated the document, the party wishing to make such disclosure shall give at least ten (10) days advance notice in writing to the counsel who designated such information as Confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. If, within the ten (10) day period, a motion is filed objecting to the proposed disclosure, a disclosure is not permissible unless and until the Commission has denied such motion.

(f) The number of reviewing representatives designated by a party to review Confidential Information under section (a)(2) of this Paragraph may not exceed twenty (20) individuals (excluding paralegals and clerical employees) unless (i) the party producing the Confidential Information, and any third party whose Confidential Information is being disclosed, consent to additional reviewing representatives, or (ii) the Commission denies a motion to bar disclosure of the Confidential Information to additional reviewing representatives. Failure to file such a motion within ten (10) days after receiving written Notice that a reviewing party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written Notice shall (a) identify the additional reviewing representative(s), (b) identify the Confidential Information that is proposed to be disclosed, and (c) provide the current employment and position of the proposed additional reviewing representative(s). If within five (5) days after the list is supplied to opposing parties, a motion is made objecting to the proposed disclosure, disclosure is not permissible unless and until the Commission has denied the Motion. For any additional reviewing representatives, the parties must serve notice as specified above.

(g) It is anticipated that, among other things, BellSouth Public Communications, Inc. ("BSPC") may produce, pursuant to this Protective Order, certain information regarding existing payphone locations. The purpose of this information will be to assist in the efficient transfer of payphone service at each location from BSPC to another payphone service provider upon BSPC's departure from the South Carolina payphone market. In order to accomplish this purpose, and notwithstanding any other provision of this Protective Order, the South Carolina Public Communications Association ("SCPCA") may, subject to the following limitation, disclose the contents of this list to its members who provide payphone service in South Carolina. The disclosure by SCPCA may only be made by the SCPCA's president, and shall be limited geographically, on a member-by-member basis, so that the SCPCA shall only provide information to individual members related to BSPC payphones situated in each member's actual geographic area of operation.

4. *Declassification.* A party may apply to the Commission for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The party or other person that designated the document or testimony as Confidential Information shall be given notice of the application and an opportunity to respond.

5. *Confidential Information Offered in Evidence or Filed in the Record.* Subject to the Commission's rules and applicable state statutes, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the Commission (or to an arbitrator

appointed by the Commission) in This Proceeding, provided that the proponent does so in the manner set forth in this Protective Order and provides reasonable advance written notice of the party's intent to do so. Pursuant to this Protective Order, any party may move before the Commission for any order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The Commission will then determine whether the proffered evidence should continue to be treated as Confidential Information and, if so, what protection, if any, may be afforded such information at any hearing or other proceeding.

6. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly (within two (2) business days) notify the party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

7. *Filing.* Confidential Information need not be filed with the Commission except when required in connection with motions under the Commission's rules and regulations or other matters pending before the Commission. If filed, such information shall be filed under seal and shall remain sealed while in the Commission's office so long as they retain their status as Confidential Information.

8. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures or Paragraph 3 above.

9. *Use.* Persons obtaining access to Confidential Information under this Protective Order may use the information only for preparation of and the conduct of litigation in This Proceeding and any related appeals or review proceedings, and may not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

10. *Non-Termination.* The provisions of this Protective Order shall not terminate at the conclusion of This Proceeding.

11. *Modification Permitted.* Nothing in this Protective Order shall prevent any party from objecting to discovery that it believes to be otherwise improper.

12. *Responsibilities of the Parties.* The parties are responsible for employing reasonable measures to control, consistent with this Protective Order, duplication of, access to, and distribution of Confidential Information.

13. *Definition of "This Proceeding".* For the purposes of this Protective Order, the phrase "This Proceeding" shall only include South Carolina Public Service Commission Docket No. 2003-77-C and any appeals thereof.

14. *Damages.* Because the Third-Party Confidential Information represents substantial commercial value to the current and future business of the third parties, the parties agree that any

material disclosure of the third party Confidential Information would result in substantial damages to the commercial operations of the third parties. In the event that third party Confidential Information is disclosed in violation of this Protective Order by any employee, agent, attorney, expert or consultant for a party to this Protective Order, then such party agrees that it will be liable for the payment of any damages actually incurred by the producing party that are proximately caused by the violation and finally awarded to the producing party by a court of competent jurisdiction. It is further agreed that if any provision of this Protective Order shall contravene any statute or constitutional provision or amendment either now in affect or which may, during the term of this Protective Order be enacted, then that conflicting provision in the Protective Order shall be deemed null and void with respect to the Commission. The parties agree to submit to the jurisdiction of state or federal courts within the State of South Carolina, but understand that the sole remedy for the settlement of damage claims against the South Carolina Public Service Commission arising from this Protective Order shall be limited to those measures permitted by South Carolina law.

15. *Public Interest Payphone Proceeding.* Each party producing Confidential Information shall (i) file one copy of its Confidential Information with the Commission and (ii) retain (or have retained by such party's counsel of record) at least one copy of its Confidential Information for up to three years following the conclusion of This Proceeding. The Confidential Information filing with the Commission shall be accompanied by an affidavit, signed by an authorized custodian of the Confidential Information or other authorized representative of the producing party. The accompanying affidavit shall state that, based on the personal knowledge of the affiant, (a) the Confidential Information filed with the Commission is accurate and trustworthy, and (b) the memorandum, report, record, or data compilation containing the Confidential Information is/was kept in the course of the producing party's regularly conducted business activity, and it was the regular practice of that business activity to make such memorandum, report, record, or data compilation. Notwithstanding any provision in this Protective Order to the contrary, the Commission (A) may retain, under seal, one copy of all Confidential Information filed with the Commission (including the applicable affidavit from the producing party) and (B) shall be permitted to disclose any and all such Confidential Information to any party of record in a public interest payphone proceeding conducted by the Commission (including any appeals thereof) provided that such disclosure shall be governed by an appropriate protective order.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn
Chairman

ATTEST:

Gary E. Walsh

Executive Director

Dated: _____, 2003

STATE OF _____
COUNTY OF _____

(ATTACHMENT A)

CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE

BEFORE ME , the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared _____ (insert name), who, being by me first duly sworn, deposed and said as follows:

I certify my understanding that Confidential Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in South Carolina Public Service Commission Docket No. 2003-77-C, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of " Confidential Information," and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Order and shall be used only for the purposes of the proceedings in Docket No. 2003-77-C.

Signature: _____

Date of Execution: _____
(Type or Print below)

Name: _____

Title: _____

Company: _____

Address: _____

Requesting Party: _____

SWORN TO AND SUBSCRIBED BEFORE ME

this _____ day of _____, 2003

My Commission expires: _____

(SEAL)

Notary Public for South Carolina
495022